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IN THE SUPREME COURT OF THE STATE OF OHIO

No. 29622

NATHAN KOPLIN, ON BEHALF OF HIMSELF AND ALL OTHER POLICYHOLDERS OF THE OHIO NATIONAL LIFE INSURANCE COMPANY, AN OHIO CORPORATION, SIMILARLY SITUATED,

Appellant,

vs.

THE OHIO NATIONAL LIFE INSURANCE COMPANY,

Appellee.

STATEMENT AS TO JURISDICTION

Pursuant to the provisions of Rule 12 of the Supreme Court of the United States the above-named petitioner and appellant files this, his separate statement, particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of the State of Ohio appealed from herein, as follows:

Basis of Jurisdiction

Petitioner says that this cause comes into the Supreme Court of the United States on appeal as of right from a final judgment rendered in the Supreme Court of the State of Ohio which is the highest court of said state in which a

decision in this cause could be had where there was drawn in question the validity of Sections 9364-1 to 9364-8, both inclusive, of the General Code of Ohio, on the ground of their being repugnant to Paragraph 1 of Section 10 of Article I and Section 1 of the Fourteenth Amendment to the Constitution of the United States and the decision was in favor of their validity.

Petitioner says that the United States Code Sections 344(a) and 861(a) of Title 28 are the basis upon which petitioner contends that the Supreme Court of the United States has jurisdiction to review the judgment in question. Said sections read, in part, as follows:

> "Sec. 344(a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."
>
> "Sec. 861a. The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Statute Involved

The statute involved in this case was an act passed by the Legislature of the State of Ohio on July 17, 1941, to revise the laws relating to the conversion of stock life in-

surance corporations into mutual life insurance corporations and for that purpose to amend Sections 9364-1, 9364-2 and 9364-3 of the General Code of Ohio and to enact Sections 9364-2a, 9364-2b, 9364-4, 9364-5, 9364-6, 9364-7 and 9364-8 of the General Code. Said statutes are set out verbatim in Appendix A attached to this statement.*

Date of Judgment

The date of the judgment of the Supreme Court of the State of Ohio sought to be reviewed is May 31, 1944. An application for rehearing was filed in accordance with the rules of said Court and was denied on June 14, 1944. The date upon which the application for appeal was presented to the Chief Justice of the Supreme Court of the State of Ohio was July 31, 1944.

Nature of the Case

This cause involves the question whether by a proposed plan of mutualization a stock life insurance company organized under the laws of the State of Ohio may be converted into a mutual life insurance company and as a result of such conversion the stockholders of the stock life insurance company may be paid in the aggregate Three Million Three Hundred Fourteen Thousand Three Hundred Twenty Dollars ($3,314,320) out of the capital structure of said stock life insurance company pursuant to Sections 9364-1 to 9364-8, both inclusive, of the General Code of Ohio, without impairing the vested rights of policyholders in the capital structure of said insurance company, and in that respect whether Sections 9364-1 to 9364-8, both inclusive, of the General Code of Ohio, are unconstitutional, null and void in that they are repugnant to Paragraph 1 of Section 10 of ARTICLE I of the Constitution of the United States which

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* (Clerk's Note—These statutes are printed as Appendix "A" to the Jurisdictional Statement in the case of No. 450, October Term, 1944.

provides that no state shall pass any law impairing the obligation of contract, and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides, "Nor shall any state deprive any person of life, liberty or property without due process of law".

The judgment of the Supreme Court of Ohio in this cause affects adversely numerous policyholders of the appellee residing in twenty-seven (27) of the United States.

The stage of the proceedings in the court of first instance and in the appellate courts at which and the manner in which the federal questions sought to be reviewed were raised and the way in which they were passed upon by the Court, are all set forth in the Petition for Appeal and for the sake of brevity will not be restated.

The ruling on the Demurrer in the Court of Common Pleas is found on page 21 of the Record. The ruling on the Demurrer in the Court of Appeals is found on pages 23 and 24 of the Record.

The judgment of the Supreme Court of Ohio is found on page 60 of the Supreme Court Record and the order denying the application for rehearing is found on page 61 of the Supreme Court Record.

The Opinion of the Court of Common Pleas of Summit County, Ohio, denying the constitutionality of said statutes, has been reported in 10 Ohio Supplement, page 12, and is found in 45 North Eastern (2nd).

The Opinion of the Court of Appeals of Summit County, Ohio, sustaining the constitutionality of the said statutes has been reported in 73 O. App. 267.

The Opinion of the Supreme Court of Ohio, affirming the judgment of the Court of Appeals of Summit County, Ohio, has been reported in 143 O. S. 329.

The Undisputed Facts in the Record

This cause comes into this Court in company with No. 450, Scott A. Belden, on behalf of himself and all other policyholders of *The Union Central Life Insurance Company* vs. *The Union Central Life Insurance Company.* The two causes were argued together in the Court of Common Pleas of Summit County, Ohio, the Court of Appeals of Summit County and the Supreme Court of the State of Ohio, and were made the subject of a joint opinion in each court.

The question presented in this cause is identical with the question presented in the Union Central cause; that is, the constitutionality of the Ohio law permitting stock life insurance companies to convert themselves into mutual life insurance companies.

The Petition (R. 3) and the Answer (R. 14) set out fully the operative facts in this cause.

In general, the facts are substantially like those involved in the Union Central cause. After the Legislature of Ohio enacted Sections 9364-1 to 9364-8, both inclusive, of the General Code, The Ohio National Life Insurance Company proceeded with a plan to convert itself into a mutual life insurance company. Its directors and stockholders adopted the plan and the Answer alleges that the policyholders duly approved the plan and the Answer alleges that the policyholders duly approved the plan (R. 16).

The Ohio National Life Insurance Company began business as a stock life insurance company on September 23, 1910 and does business and has policyholders in twenty-seven (27) of the United States (R. 15). It has outstanding 82,858 shares of capital stock, each having a par value of Ten Dollars ($10.00) (R. 15). The Answer admits that the plan includes payment to stockholders of Forty Dollars ($40.00) per share (R. 16), a total of $3,314,320.00. The

Answer alleges that the shares of the stockholders are to be purchased by the Board of Directors from time to time as funds are available (R. 16). The appellant became a non-participating policyholder with privilege to exchange for paid-up participating policy in the appellee on October 8, 1931 (R. 4, 5, 6 and 15).

The facts in this cause differ from those in The Union Central Life Insurance Company cause principally in that:

(a) The pleadings show no limitation upon the amount of dividends which may be paid to shareholders.

(b) The pleadings show that appellant's policy is now a nonparticipating policy which may be exchanged for a participating policy when it is fully paid up.

We adopt, by reference, all of the arguments made in the Statement as to Jurisdiction filed in the *Union Central* case. That policyholders have rights in the surplus of a life insurance company: that they are entitled to have the capital retained as security for their claims as creditors; that such rights are vested; that mutualization will deprive them of such rights and impair their contracts; that such impairment and deprivation results from unconstitutional legislative acts; and that the Ohio act unlawfully delegates legislative powers, are propositions fully argued in that brief. The whole of that argument applies equally to Ohio National.

The fact that Koplin's policy is now a non-participating policy requires no different conclusion than that to be reach in the *Union Central* case, where Belden holds a participating policy, and that the Company issues only participating policies. Koplin's right to receive a participating policy exists now. The participation value will be destroyed or diminished if the company's surplus and capital are removed. Accordingly he is deprived of a present right.

The defendant tacitly admits plaintiff's allegation that payment of $3,314,320 to stockholders would not only wipe out all its capital and surplus, but would cut into policy reserves to the extent of more than $1,000,000 (R. 10). It says, however, that it wants to pay out the $3,314,320 "from time to time as funds are available", and indicates, thereby, that it recognizes that it could not pay out the entire amount at one time. In this respect, it is unlike Union Central which expects to pay off the stockholders at one time, and not "from time to time".

But the mere assertion that the Board of Directors will make payments from time to time "as funds are available" helps no one. The plan, when adopted, will permit them to wipe out all the capital and surplus in one day. Of course they cannot invade the policyholders reserves. The grant of authority to the Directors to wipe out the capital and surplus impairs the value of the plaintiff's contract, for no one, save the Board, can know on what day the structure of the company will be demolished.

The conclusion in this case ought to be the same as the conclusion in the *Union Central* case: i. e., that the Ohio Mutualization Act offends against the Federal constitution; and that the judgment of the Supreme Court of Ohio should be reversed.

Respectfully submitted,

CHARLES F. SCHNEE,
ROBERT GUINTHER,
Attorneys for Petitioner.

Note: The opinion in this case is printed as an appendix to the Jurisdictional Statement in No. 450.